S.B.CIVIL WRIT PETITION NO.4737/2004

Smt.Shanti Devi
v.
State of Rajasthan & Ors.

DATE OF ORDER :: 27th April, 2007

HON'BLE MR.JUSTICE GOVIND MATHUR

Mrs.Nupur Bhati, for the petitioner.
Mr. S.S.Ladrecha, Additional Government Advocate.

....

This petition for writ is preferred to claim family pension in accordance with Rule 62 of the Rajasthan Civil Services (Pension) Rules, 1996 (hereinafter referred to as “the Rules of 1996”).

In brief, facts of the case are that husband of the petitioner Shri Tolaram was in employment of the respondents as Class-IV employee but he was not reporting on duties from 4.6.1996. As a matter of fact he was missing, therefore, a report too was published in local newspaper on 9.7.1996. A first information report bearing No.129/1996 was also lodged at Police Station Kesrisinghpur on 4.7.1996 about missing of aforesaid Shri Tolaram. Despite all efforts no whereabouts of Shri Tolaram came into knowledge of the petitioner and, therefore, on 2.8.2003 she submitted a representation to the respondents for grant of family pension by treating her husband dead. The petitioner reiterated her cause by submitting various

representations but of no consequence. She also obtained a declaration from the Court of learned Civil Judge (SD) Srikaranpur by a judgment and decree dated 6.1.2004 to treat Shri Tolaram dead. The judgment and decree aforesaid was also submitted to the District Education Officer (Secondary), Sriganganagar to claim family pension. It was informed to the petitioner by the authorities of the respondent department that no family pension could be granted to her as the department under an order dated 31.3.2001 had already dismissed Shri Tolaram from service while exercising powers under Rule 86 of the Rajasthan Service Rules, 1951 (hereinafter referred to as "the Rules of 1951") for remaining absent unauthorisedly, hence this petition for writ is preferred.

The contention of the petitioner is that her husband was missing from duties since 4.6.1996 and an FIR was lodged at Police Station concerned on 4.7.1996. The authorities of the respondent department were aware of this fact, as such there was no occasion to initiate any proceedings under Rule 86 of the Rules of 1951 and to dismiss Shri Tolaram from service. According to the petitioner she sought declaratory decree with regard to civil death of Shri Tolaram only after completion of seven years from the date of his missing and, therefore, prior to that there was no occasion for her to claim for family pension.

A reply to the writ petition has been filed on behalf of the respondents with an stance that as Shri Tolaram was not reporting on duties, therefore, proceedings under Rule 86 of the Rules of 1951 were initiated and by an order dated 31.3.2001 he was dismissed from service, as such no family pension can be granted to the petitioner.

Heard counsel for the parties.

Rule 86 of the Rules of 1951 provides that a Government servant who is absent from duty without leave or before leave applied for has been sanctioned by the competent authority shall be treated to have remained wilfully absent from duty and such absence shall amount to interruption in service involving forfeiture of past service unless on satisfactory reasons being furnished. Thus, it is clear that the powers under Rule 86 of the Rules of 1951 to take an action against a Government servant can be used only in the event of wilful absence. A wilful absence means that a positive action with the choice of Government servant to remain absent from duties without authority of law. Such absence does not include the absence due to the reasons beyond control of the employee. If the employee satisfies the authority competent that his/her absence was for the reasons beyond his/her control then no action under Rule 86 of the Rules of 1951 can be taken.

It is not in dispute that husband of the petitioner was in employment of the respondents as Class-IV employee and was missing since 4.6.1996. A first information report was also lodged in this regard at Police Station Kesrisinghpur on 4.7.1996. A person missing and who was under search was erroneously treated by the respondents in instant matter as a government servant absent wilfully from duties. It is true that that the petitioner at the first instance claimed pension by representation dated 2.8.2003 and that was the right occasion to do so as she waited for a period of seven years to get a presumption of civil death of her husband. As a matter of fact there was no occasion for the petitioner to claim family pension prior to that. It is relevant to note that the Police Station Kesrisinghpur also closed investigation by submitting a final report on 20.7.2003. The respondent department despite having knowledge about missing of Shri Tolaram initiated proceedings under Rule 86 of the Rules of 1951 and dismissed him from service is quite unjust. It appears nothing but to be an attempt to frustrate the rights of the petitioner for getting family pension.

In view of the discussion made above, this petition for writ deserves acceptance and, therefore, the same is allowed. The order, dismissing Shri

Tolaram from service while exercising powers under Rule 86 of the Rules of 1951, is declared illegal and the petitioner is declared entitled for getting pension in accordance with Rule 62 of the Rules of 1996.

(GOVIND MATHUR),J.

Kkm/ps.